

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TU MY TONG,

Plaintiff,

v.

No. CIV-15-682 JB/LAM

ALEXANDER B. SHAPIRO, et al.,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION TO DISQUALIFY
MAGISTRATE JUDGE**

THIS MATTER is before the Court on Plaintiff's motion to disqualify the Magistrate Judge assigned to her case, filed March 1, 2016. [*Doc. 43*]. In her motion, Plaintiff states that Plaintiff refused to consent to the Magistrate Judge in both this case and in her earlier-filed case, No. Civ. 15-191, MCA/SMV, and that, for this reason, the Magistrate Judge did not have the authority to enter the PF&RD. *See* [*Doc. 43* at 1-2]. The Clerk of the Court assigns a pre-trial Magistrate Judge to every civil case, excluding Social Security appeals. *See* D.N.M. LR-Civ. 73.1(a). While a party may refuse to consent to a Magistrate Judge to preside over the case as a *trial* Magistrate Judge (*see* D.N.M. LR-Civ. 73.1(b)), a party has no right to refuse to consent to the *pretrial* Magistrate Judge assigned to the case. As explained in the Proposed Findings and Recommended Disposition, Plaintiff's claims were referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) to recommend to the Court an ultimate disposition of the case, which is what the Magistrate Judge did. *See* [*Doc. 39* at 2] and [*Doc. 23*]. Therefore, the Court finds that Plaintiff's motion to disqualify is without merit and shall be **DENIED**.

IT IS THEREFORE ORDERED that Plaintiff's motion to disqualify the Magistrate Judge assigned to this case [*Doc. 43*] is **DENIED**.

IT IS SO ORDERED.


LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE